

REMARKS

Reconsideration of the application is respectfully requested in view of the following remarks.

The application is directed to a bakery product which includes flour and from 0.5 to 15 wt% on flour of sterol and/or stanol fatty acid ester and from 0.1 to 1 wt% of emulsifier on flour, wherein the emulsifier is selected from a recited group and a combination thereof. It is important to note that the amount of the sterol and the amount of the emulsifier are given on flour.

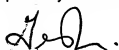
Although Yuan et al., US Patent No. 6,190,720 mentions baked goods, the Office points to no mention by Yuan et al. of levels of flour in any of its baked goods. The Office appears to rely on the inherency of the level of flour with respect to sterol and emulsifier in the Yuan patent. However, even if it were reasonable to say that the recited levels of sterol and emulsifier on flour could be present in Yuan et al., the fact that a certain result or characteristic may be present in the prior art is not sufficient to establish the inherency of that result or characteristic. MPEP §2112 IV. To establish inherency, the intrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference. Inherency may not be established by probabilities or possibilities.

The Office points to Yuan et al. as teaching that sterol esters comprise up to about 90% of their ingredient and that their ingredient comprises up to 20% of a food. Taking as an example the upper ends of these ranges, then, sterol would comprise about 18% of the food. Applicants' claim 1 recites 0.5 to 15 wt% on flour of sterol and/or sterol fatty

acid ester. If sterol is 18% of the product it hardly seems likely that it could be 15% of the flour. It is apparent from this example that it is not inevitable that the parameters of the present claims would be satisfied by Yuan et al.

Accordingly, it is submitted that the Office has not made out a case of inherency or of unpatentability under §102, so it is respectfully requested that the rejection be withdrawn.

Respectfully submitted,



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